

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
SEPTEMBER 22, 2021**

ITEM 15

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT A DROUGHT-RELATED EMERGENCY REGULATION FOR CURTAILMENT OF DIVERSIONS ON MILL AND DEER CREEKS DUE TO INSUFFICIENT FLOW FOR SPECIFIC FISHERIES

DISCUSSION

On May 10, 2021, Governor Newsom declared a drought state of emergency for the counties of the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake watersheds (May 2021 Proclamation), directing the State Water Resources Control Board (State Water Board), in coordination with the California Department of Fish and Wildlife (CDFW), to evaluate the minimum instream flows or other actions needed to protect salmon, steelhead, and other native species in critical stream systems of the State. In addition, the State Water Board was directed to consider emergency regulations to establish minimum drought instream flows if other actions, including voluntary measures, are not sufficient to protect salmon, steelhead, and other native fishes in critical stream systems in those watersheds.

Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”

In the previous drought years of 2014 and 2015, the State Water Board adopted an emergency regulation for the curtailment of diversions due to insufficient flow for specific fisheries for Mill, Deer, and Antelope Creeks, tributary to the Sacramento River, in Tehama County. Water supply conditions in 2021 are drier than during the previous drought, and instream habitat conditions reflect the need for minimum flow requirements to protect species on Mill and Deer Creeks; regulatory requirements have been put in place since the prior drought that provide for minimum flows on Antelope Creek. Similar to the emergency regulation adopted to protect these same species on these creeks in last drought, the [proposed regulation](#) will establish drought emergency minimum flow requirements for the protection of specific runs of federally- and state-listed anadromous fish in two tributaries to the Sacramento River, Mill Creek and Deer Creek. The proposed Mill Creek and Deer Creek drought emergency minimum flow requirements in

the 2021 regulation are consistent with the minimum flow requirements adopted in the 2015 emergency regulation.

The proposed regulation would also provide the State Water Board with a more streamlined process to curtail diversions of water to prevent the unreasonable diversion or use of water to ensure that minimum instream flow is available for the migration of federally- and state-listed anadromous fish in Mill Creek and Deer Creek. The proposed regulation would allow for local cooperative solutions as an alternative means of reducing water diversions to meet the minimum instream flow requirements or to comparably protect the identified fishery resources, and includes an exception to curtailment for minimum human health and safety needs. To reduce the impacts of inefficient flood irrigation practices for lawn watering, the proposed regulation would also establish new limitations for domestic lawn irrigation consistent with California Code of Regulations, title 23, section 697.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution?

FISCAL IMPACT

This activity is budgeted within existing resources, and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution adopting the emergency regulation.